



FEDERAL ELECTION COMMISSION
Washington, DC 20463

Lawrence H. Norton, Esq.
William A. Powers, Esq.
Venable LLP
575 Seventh Street, N.W.
Washington, D.C. 20004

DEC 13 2016

RE: MUR 7072
Kanta Bera

Dear Messrs. Norton and Powers:

On May 26, 2016, the Federal Election Commission notified your client, Kanta Bera, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, information supplied by you, and other information, the Commission, on December 6, 2016, voted to dismiss this matter. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016).

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in black ink that reads "Mark Allen".

Mark Allen
Assistant General Counsel

Enclosure
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 RESPONDENT: Kanta Bera

MUR: 7072

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7 **I. INTRODUCTION**

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9 The Complaint in this matter is based on a guilty plea filed in Federal District Court by
10 Babulal Bera, father of U.S. Representative Amerish "Ami" Bera ("Rep. Bera"), in which
11 Babulal Bera admitted making approximately \$270,000 in contributions in the names of about 90
12 other individuals to Ami Bera for Congress (the "Committee") during the 2010 and 2012 election
13 cycles.¹ Kanta Bera is Babulal Bera's wife and the mother of Rep. Bera.

14 For the reasons set forth below, the Commission dismisses the Complaint as to Kanta
15 Bera.²

16 **II. FACTUAL BACKGROUND**

17 Representative Ami Bera (CA-7) ran unsuccessfully for Congress in 2010, won his seat
18 in 2012, and was re-elected in 2014 and 2016. On May 10, 2016, Babulal Bera pleaded guilty to
19 violating 52 U.S.C. §§ 30116(a)(1)(A) and 30122 by making contributions in the names of others
20 and making excessive contributions during the 2010 and 2012 election cycles.³ According to the
21 Factual Basis for Pleas, Babulal Bera reimbursed approximately 90 contributors who made more
22 than 130 contributions to the Committee.⁴

¹ Compl. At I, Ex. A (May 23, 2016). Ami Bera for Congress is Ami Bera's principal campaign committee.

² See *Heckler v. Chaney*, 470 U.S. 821 (1985).

³ Plea Agreement, *United States v. Bera*, No. 2:16-cr-00097 (E.D. Cal. May 10, 2016) ("Plea Agmt."). On August 18, 2016, Babulal Bera was sentenced to a prison term of one year and one day, supervised release for a term of 36 months, and a criminal fine of \$100,000. Judgment, *United States v. Babulal Bera*, No. 2:16-cr-00097 (E.D. Cal. Aug. 18, 2016).

⁴ Plea Agmt. Ex. A (Factual Basis for Pleas).

1 The Factual Basis for Pleas states that, during the 2010 election cycle, Babulal and Kanta
2 Bera each made the maximum allowable contribution to the Committee for the primary and
3 general elections — then a total of \$4,800 — between April 4, 2009, and May 4, 2009.⁵ Babulal
4 Bera then “directly and indirectly solicited relatives, friends and acquaintances to make the
5 maximum allowable federal campaign contribution [to the Committee], with the understanding
6 that he would reimburse them in whole or in part.”⁶ From approximately May 11, 2009, through
7 at least August 20, 2010, these individuals contributed a total of approximately \$225,326 to the
8 Committee.⁷ Babulal Bera provided full or partial refunds to these individuals totaling more than
9 \$220,000.⁸

10 According to the Factual Basis for Pleas, Babulal Bera conducted a similar scheme
11 during the 2012 election cycle.⁹ On approximately January 5, 2011, Babulal and Kanta Bera
12 each contributed the maximum allowable amount for the primary and general elections — then
13 \$5,000 — to the Committee. Babulal Bera again solicited family, friends, and acquaintances to
14 make the maximum allowable contribution to the Committee with the understanding that he
15 would reimburse the conduits for their donations.¹⁰ The plea agreement indicates that from at
16 least January 31, 2011, through at least December 5, 2011, these individuals contributed a total
17 of approximately \$43,400 to the Committee.¹¹ Between April 26, 2011, and at least June 9,
18 2012, these individuals received full reimbursements for their contributions from Babulal Bera,

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

1 which were delivered either by Babulal Bera himself or through third parties working at his
2 behest.¹²

3 In the joint Response of Kanta and Babulal Bera, they acknowledge Babulal's plea
4 agreement, but argue that in light of his taking "full responsibility for his conduct," the
5 Commission should dismiss the Complaint as a matter of prosecutorial discretion.¹³ They
6 contend that "Mr. Bera's acceptance of responsibility, remorse, age, and health issues, along with
7 his lack of prior experience making political contributions" support dismissal.¹⁴ They ask that
8 the Complaint's allegations against Kanta Bera also be dismissed on the grounds that the cited
9 news articles suggesting her involvement in the scheme are "devoid of any facts that suggest
10 Mrs. Bera violated the Act."¹⁵

11 According to press accounts, DOJ announced on September 16, 2016, that no other
12 charges would be sought in the Babulal Bera matter.¹⁶

13 III. LEGAL ANALYSIS

14 In the 2010 election cycle, the Act prohibited an individual from making contributions to
15 a candidate which, in the aggregate, exceeded \$2,400 per election.¹⁷ In the 2012 cycle, the
16 contribution limit was \$2,500 per election.¹⁸ The Act further provides that no person shall make
17 a contribution in the name of another or knowingly permit his name to be used to effect such a

¹² Information ¶13, *United States v. Babulal Bera*, No. 2:16-cr-00097 (E.D. Cal. May 9, 2016) ("Information").

¹³ Bera Supp. Resp. at 1.

¹⁴ *Id.* The Response notes that Babulal and Kanta Bera are 83 and 82 years old, respectively. *Id.*

¹⁵ *Id.* at 8.

¹⁶ See Denny Walsh, *No Election Fraud Charges Against Ami Bera, Says U.S. Justice Department*, SACRAMENTO BEE, Sept. 16, 2016, available at <http://www.sacbee.com/news/local/crime/article102224787.html>.

¹⁷ 52 U.S.C. § 30116(a)(1)(A).

¹⁸ *Id.* See 11 C.F.R. § 110.1(b)(1).

1 contribution, and that no person shall knowingly accept a contribution in the name of another.¹⁹

2 It also constitutes a violation of the Act to help or assist any person in making a contribution in
3 the name of another.²⁰

4 Babulal Bera admits in his plea agreement that he knowingly and willfully engaged in a
5 scheme to make excessive contributions in the names of others to his son's campaign committee
6 during two successive election cycles.²¹ Specifically, he admits that after he reached his
7 individual contribution limit to the Committee for the 2010 and 2012 election cycles, he "directly
8 and indirectly" solicited approximately 90 other individuals to make contributions to the
9 Committee in their own names, with the promise that he would reimburse them for their
10 donations.²² Bera also admits that he reimbursed his conduits, in whole or in part. In total, he
11 reimbursed more than \$220,000 in contributions to the Committee during the 2010 election cycle
12 and \$43,400 in contributions to the Committee during the 2012 election cycle.

13 In stating that he solicited conduits "directly and indirectly," Babulal Bera's plea
14 agreement suggests that, in addition to the conduits themselves, others may have helped or
15 assisted in his scheme.²³ In that agreement, the Department of Justice ("DOJ") stated that it "did
16 not intend to prosecute the defendant's wife, Kanta Bera."²⁴ As noted, DOJ reportedly closed the
17 investigation without charging any other person.

¹⁹ 52 U.S.C. § 30122.

²⁰ 11 C.F.R. § 110.4(b)(1)(iii).

²¹ See generally Information; Plea Agmt. Ex. A.

²² *Id.*

²³ Plea Agreement, *United States v. Bera*, No. 2:16-cr-00097 (E.D. Cal. May 10, 2016) ("Plea Agmt.") Ex. A (Factual Basis for Pleas).

²⁴ Plea Agmt at 6.

1 The Commission has determined as a matter of prosecutorial discretion to dismiss the
2 allegations against Kanta Bera in view of the lack of information directly suggesting that she
3 helped or assisted Babulal Bera make contributions in the name of another, her advanced age,
4 and Babulal Bera's guilty plea, prison sentence, and criminal fine. In addition, the statute of
5 limitations on most of the activity here has run.²⁵ Under these circumstances, the Commission
6 dismisses the Complaint as to Kanta Bera. *See Heckler v. Chaney*.²⁶

²⁵ The statute of limitations has run on the entire \$220,000 in violation during the 2010 election cycle. As for the \$43,400 in violation from the 2012 election cycle, the plea materials provide a general range of dates and do not identify specific contributions, but it appears that a substantial portion of that activity is now also beyond the statute of limitations.

²⁶ 470 U.S. 821 (1985).